IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17640 of 2003

Date of Decision: 22-04-2004

RAVINDRA RAMJORBHAI OZA

Versus

WESTERN RAILWAY

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Petitioner:

MR NIRAV C THAKKAR

For the Respondents:

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. Aggrieved by order of Central Administrative Tribunal, Ahmedabad Bench (CAT), passed in Original Application No. 57 of 2003 dated 14-11-2003, petitioner challenges the same through this Special Civil Application.

Whether Reporters of Local Papers may be allowed to see the Judgment?

2. Briefly stated, petitioner was working as Senior Clerk in Western Railway Consumers Co-operative Association Limited. On closure of this Association, he applied for appointment to the post in Quasi Administration Offices in Group D. The Western Railways, vide order dated 25-07-2001 published the list of employees who were found qualified and suitable for the posts, petitioner being one of them at Sr.No.10. Thereafter, screening and medical examination were conducted as per Rules. Petitioner was found fit and suitable for absorption in Group D post with Railways, and directed to report at the Office on 05-11-2000 for completion of further formalities. The Western Railways issued appointment letter/Office Order dated 20-05-2002 appointing the petitioner on the post of Khalasi. Petitioner wanted to join, but he was not permitted to do so, despite repeated requests to that effect. Ultimately, petitioner approached CAT through Original Application No.462 of 2002. CAT, vide order dated 29-08-2002, directed respondents to treat the Original Application as representation from the petitioner, consider the same, and pass appropriate order within a month from the date of receipt of copy of order. However, appointment of petitioner was cancelled on the ground that information from Civil Authorities pointed out that petitioner was involved in a case under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985. The petitioner had challenged the detention order in this Court. During the hearing of the writ petition, State Government pointed out that detention order had been revoked against the petitioner. Thereafter, petitioner filed Original Application No.57 of 2003 seeking direction against the respondents to appoint him on the post of Khalasi. However, by the impugned order, prayer has been rejected on the ground that petitioner suppressed material information in the Attestation Form. For coming to this conclusion, CAT relied upon the decision of Apex Court in Kendriya Vidyalaya Sangathan and others v. Ram Ratan Yadav (2003 SCC (L&S) 306. This order has been challenged through the present Special Civil Application.

3. Heard learned counsel for the parties, record perused, particularly, various documents touching the question involved, and the reasons recorded by the CAT

for rejecting the Original Application of the petitioner.

4. The sole question for determination in this case is, whether petitioner has suppressed material information, and supplied false information in the Attestation Form furnished to the respondents? Petitioner submits that he is qualified and suitable for the post, therefore, he was selected. There is no doubt that his candidature was considered by the respondents, found suitable, therefore, appointed to the post of Khalasi. However, upon verification, Civil Authorities pointed out the involvement of petitioner in case, under The Gujarat Prevention of Anti-Social Activities Act, 1985. It is also pointed out that petitioner was prosecuted for 8 other offences. These facts find mention in paragraph 6 of reply affidavit filed by the respondents. With this background, we refer to Attestation Form, Note 3 mentioning that:

> "If the fact that false information has been furnished or that there has been suppression of any factual information in the Attestation Form comes to notice at any time during the service of a person, his services would be liable to be terminated."

Thereafter, Column 12 may be quoted as under:-

> "12.(a) Have you ever been arrested? No.
> (b) Have you ever been prosecuted? No.
> (c) Have you ever been kept under detention? No.
> (d) Have you ever been bound down? No."

Against sub-column (a), (b) and (c) petitioner stated "No" when he should have stated "Yes", and given the details thereof against sub-column 12(k), read with Note-1. Therefore, it is clear that petitioner has suppressed material information, and supplied false information.

5. Shri Thakkar places before us decision of Apex Court in T.S.Vasudavan Nair v. Director of Vikram Sarabhai Space Centre and others (1988 (Supp) SCC 795). In this case, the petitioner was convicted under Defence of India Rules for shouting slogans on one occasion. Therefore, he was denied employment. Apex Court held that in the special facts and circumstances of the case, petitioner should not have been denied employment on the sole ground that he had not disclosed that during emergency he had been convicted under the Defence of India Rules, for having shouted slogans on one occasion. The matter pertains to emergency period, therefore, the

Apex Court seems to have taken the same special facts and circumstances of the case. Otherwise, in a similar case, Kendriya Vidyalaya Sangathan and others v. Ram Ratan Yadav (2003 SCC (L&S) 306), the Apex Court has taken the view that suppression of material information, and making false statement, has clear bearing on the character antecedents of the person in relation to his continuance in service. A candidate having suppressed material information and/or given false information cannot claim right to continue in service. The employer having regard to the nature of the employment and/or other aspects, has discretion to terminate the service made by it.

6. Petitioner submits that he continued in service of the respondents for thirteen years, therefore, involvement in cases, which were not pending at the time of his absorption, should not be ground to cancel his appointment. Petitioner had been in the Co-operative Society of Western Railways, and as per the policy of Railways, such employees were to be absorbed in regular service, therefore, petitioner applied like other such employees. They were screened and found suitable for absorption. But such appointment was subject to attestation as to candidate's antecedents, that is why petitioner was called upon to furnish it. The petitioner committed lapse of not furnishing correct information, which led to termination of his appointment. Therefore, the contention that petitioner had been in the service of respondents for some years past may not help him, since it was not regular service, in regular line of Railway service.

7. CAT has examined the matter properly before rejecting the Original Application. We find no merit in this petition, and the same is rejected.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K. RATHOD)
JUDGE

[sndevu]
ps